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R. 79 (a)

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FEB 7 2003

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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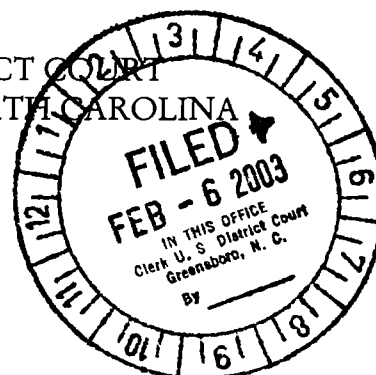
*klm*  
VOLUMETRICS MEDICAL  
IMAGING, INC.,

Plaintiff,

v.

ATL ULTRASOUND, INC.,

Defendant.



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ORDER AND JUDGMENT

BEATY, District Judge.

This civil action came on for trial before the Court and a jury during a session of court beginning January 6, 2003. Plaintiff claimed that Defendant engaged in fraud, negligent misrepresentation, and unfair and deceptive trade practices and/or unfair competition. These issues having been duly tried and answered by the jury as follows:

FRAUD

1. Did the Defendant ATL commit a fraud against the Plaintiff VMI?

Answer: YES

2. Was Plaintiff VMI damaged by the actions of Defendant ATL?

Answer: YES

3. If so, in what amount?

\$ 106.25 million

4. Is Plaintiff VMI entitled to punitive damages?

Answer: YES

5. If so, in what amount?

\$ 45 million

### NEGLIGENT MISREPRESENTATION

1. Was the Plaintiff VMI damaged by negligent misrepresentations of the Defendant ATL?

Answer: YES

2. Did the plaintiff VMI, by its own negligence, contribute to its harm?

Answer: NO

[You will answer this issue only if you have answered question No. 1, as to this claim, "Yes" in favor of the Plaintiff.]

3. If you have answered the first question as to negligent misrepresentation "Yes" and the second question as to negligent misrepresentation "No," then you will answer the final question as follows:

Was Plaintiff harmed by Defendant based upon any negligent misrepresentations that you may have so found under the instructions I have given to you as to this claim?

Answer: YES

4. Only if you have found that no fraud was committed by ATL, then you may consider the following question:

What amount of damages is Plaintiff entitled to recover against ATL for any negligent misrepresentation that you may have so found?

\$ (blank)

### UNFAIR TRADE AND DECEPTIVE PRACTICES

1. First, did Defendant do at least one of the following:

{1}Did ATL falsely represent that ATL had committed \$30-40 million to the parties' efforts to build a joint ultrasound machine?;

Answer: YES

{2}Did ATL falsely represent that further approvals for the agreement to build a joint ultrasound machine from Philips Medical Systems and Royal Philips Electronics were mere formalities and that the skids were greased at Phillips?;

Answer: YES

{3}Did ATL mislead VMI by representing that a deal priced at \$100 million would not require Philips Board approval?;

Answer: YES

{4}Did ATL mislead VMI by stating that the delay in finalizing an agreement between VMI and ATL to build a joint ultrasound machine was due to another transaction and that as soon as the "other" transaction was completed, the transaction between VMI and ATL would be finalized?;

Answer: YES

{5}Did ATL mislead VMI by sending David Croniser to Durham in September 2000 to assure the VMI employees that they should remain committed to VMI and to the arrangement to build a joint ultrasound machine because ATL intended to finalize the deal with VMI as soon as the other deal it was working on was complete?;

Answer: YES

{6}Did ATL mislead VMI by stating in September 2000 that ATL had no other plan for 3D and was not working on anything on its own in the 3D ultrasound area; and that ATL's plan was to complete their arrangement with VMI?;

Answer: YES

{7} Did ATL falsely represent that the "other deal" on which its executives were working would have not [sic] impact on the arrangement between VMI and ATL under circumstances in which ATL knew or should have known that the "other deal" would, in fact, have an impact on the arrangement between VMI and ATL?;

Answer: YES

{8}Did ATL mislead VMI by stating in December 2000 that it was committed to doing 3D and committed to doing with it VMI?;

Answer: YES

{9}Did ATL mislead VMI by failing to inform VMI that VMI should not work on developing a joint ultrasound machine because ATL was not working on developing a joint ultrasound machine?;

Answer: YES

{10}Did ATL tell VMI or discouraging [sic] VMI from discussing a potential partnership with other companies?;

Answer: YES

{11}Did ATL, intentionally fail to inform VMI that VMI was considered as an “option” in case Philips’ negotiations with Agilent were unsuccessful?;

Answer: YES

{12}Did ATL mislead VMI into believing that VMI and ATL had an arrangement to develop a joint ultrasound machine in order to eliminate VMI as a potential competitor in the ultrasound market?;

Answer: YES

{13}Did ATL falsely represent that ATL CEO Timothy Mickleson on March 23, 2000 informed David Croniser to sign the letter of intent and get on with it with respect to a deal between VMI and ATL?

Answer: YES

{14}Did ATL falsely represent that ATL CEO Timothy Mickleson had been involved in making up the original version of the Term Sheet dated

April 7, 2000?

Answer: YES

{15}Did ATL falsely represent to VMI that on June 16, 2000, the ATL Management Council had approved a deal between VMI and ATL?

Answer: YES

{16}Did ATL falsely represent on August 24, 2000 that the documentation for presenting the VMI-ATL deal to Phillips was 100% complete?

Answer: YES

{17}Did ATL falsely represent that, on June 21, 2000, the Phillips Board had approved Putting [sic] together the paperwork to submit to Phillips the VMI-ATL deal?

Answer: YES

If you find by the greater weight of the evidence that the defendant did (at least one of) the acts contended by the Plaintiff, then you would answer "Yes" in the space beside each act so found. If, on the other hand, you fail to so find, then you would answer "No" in the spaces provided.

Second, was ATL's conduct in commerce?

Answer: YES

You will answer this issue only if you have found in the Plaintiff's favor on the preceding issue. If you find by the greater weight of the evidence that the Defendant's conduct was "in commerce" or that it "affected commerce," then it

would be your duty to answer this issue “Yes” in favor of the Plaintiff. If, on the other hand, you fail to so find the it would be your duty to answer this issue “No” in favor of the Defendant.

Third, was ATL’s conduct was a proximate cause of VMI’s injury?

Answer: YES

You will answer this issue only if you have found in the Plaintiff’s favor on the preceding issues. If you find by the greater weight of the evidence that the Plaintiff has suffered an injury and that the Defendant’s conduct proximately caused the Plaintiff’s injury, then it would be your duty to answer this issue “Yes” in favor of the Plaintiff. If, on the other hand, you fail to so find then it would be your duty to answer this issue “No” in favor of the Defendant.

Fourth, If so, in what amount, if any, has the Plaintiff been damaged?

AMOUNT \$1,000,000

The Court finds that pursuant to governing North Carolina law, and the jury’s finding that Defendant committed fraud and negligent misrepresentation against Plaintiff, Plaintiff is entitled to recover of Defendant, ATL Ultrasound, Inc., compensatory damages in the amount of \$106.25 million and punitive damages in the amount of \$45 million.

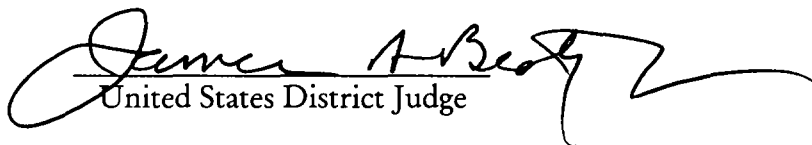
With respect to the seventeen specific acts of unfair and deceptive trade practices which the jury found were committed by Defendant and for which the jury awarded Plaintiff \$1,000,000.00 in monetary damages, the Court, upon review of the evidence and law of this

matter, finds that each of the seventeen acts found by the jury is an unfair trade practice as a matter of law so as to allow Plaintiff to recover damages for this claim. Based upon this finding, Plaintiff is therefore entitled to an election of damages either based upon the jury's award for compensatory and punitive damages for fraud or an election of damages based upon the monetary damages awarded by the jury for the unfair trade practices claim.

NOW, THEREFORE IT IS ORDERED ADJUDGED AND DECREED that Plaintiff, Volumetrics Medical Imaging, Inc., shall, based upon a timely election, have and recover from Defendant, ATL Ultrasound, Inc., either the sum of \$106,250,000.00 in compensatory damages and \$45,000,000.00 in punitive damages as awarded for fraud, or the sum of \$1,000,000.00, subject to trebling under North Carolina law, in compensatory damages awarded to Plaintiff by the jury for violations of the North Carolina's Unfair and Deceptive Trade Practices Act.

Furthermore, the Court hereby Orders that the time period for filing any post trial motions shall commence with the entry of this ORDER AND JUDGMENT dated this the \_\_\_\_ day of February, 2003. It is therefore ORDERED that any and all post trial motions shall be filed within ten days of the entry of this ORDER AND JUDGMENT. The opposing parties with respect to any motion filed shall file a response within ten days. All motions and responses filed prior to the entry of this ORDER AND JUDGMENT shall be deemed to be timely filed.

This, the 6 day of February, 2003.

  
United States District Judge